19

Department of Income

OFFICE Board of Income

STATION Madras

No. 3181

A 4540/38

Dated 9. 11. 38

T. A. Esq

Pages in the file

(SUBJECT)

Village officers headman : (S. Kanara).

Mangalore taluk - Venkataramana - Yedapadavu &

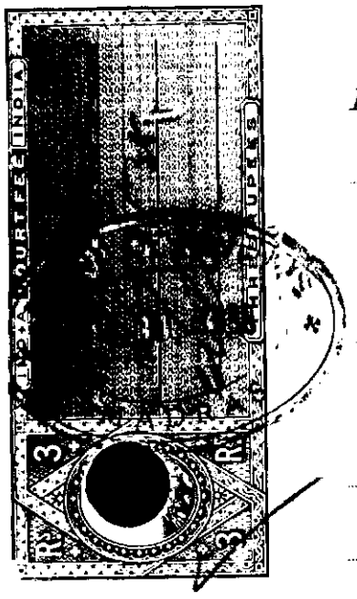
Repeal of Mysore Income-tax (Amendment) Act - Assented.

by Governor-General

Adm

VAKALAT.

Before the Hon'ble Members of the Board of Revenue,
In the Court of the Madras.



SUIT PETITION NO. _____
193

BETWEEN

Kusumaji, registered minor Jivandara's mother and guardian — ~~Plaintiff~~ *Petitioner.*

AND

1. Bhojaraja Padivala
2. Shesha Shetty — ~~Defendant~~ *Respondents*

I, Kusumaji, registered minor Jivandara's mother and guardian,

do hereby appoint and retain Mr. M.K. Devaraj, to appear for me in the above ~~Suit~~ Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed thereinand I empower Vakil to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the return of documents and draw any moneys that might be payable to me in the said suit or matter.

In witness whereof I have hereunto set my hand this 16th day of July 1938

ಕುಸುಮಜಿ ಮಿತಾವರ

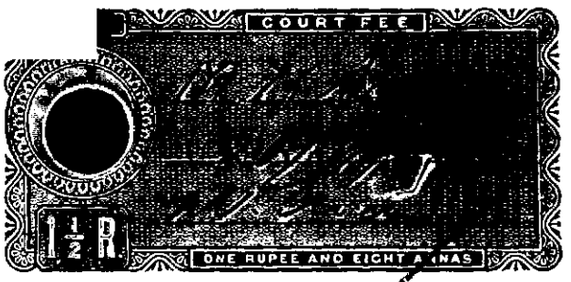
Date 193

M. K. Devaraj

The address for service of the said Vakil is 180, Govindappa Naick St, G.T., Madras.

Signed before me by the executant this 16th day of July 1938.

Ramappa Village Magistrate of Tenkayeanpadoor Mangalore Taluk.



R 4540/38

OF
BEFORE THE HON'BLE MEMBERS OF THE BOARD/REVENUE,

MADRAS.

Kusumaji, registered minor Jivandara's mother and guardian .. Petitioner.

-Vs-

1. Bhojaraja Padivala)
) .. Respondents.
2. Shesha Shetty)

P E T I T I O N.

The petitioner as guardian of her minor son Jivandara being highly aggrieved by the order of the District Collector of South Kanara dated 27-5-1938 in D.Dis.No.2085/38 reversing the Revenue Divisional Officer's Order dated 12-3-1938 in R.Dis. No.153-38 begs to file this revision petition.

The petitioner begs to respectfully submit as follows:--

1. The petitioner abovenamed is the widow of Chandayya Hegde, residing at Mijar Hosamane, Mangalore Taluk, South Kanara District.

2. Chandayya Hegde, the husband of the petitioner Kusumaji, was the permanent Potail or village headman of Thenka Yedapadavu Village.

3. The said Chandayya Hegde was the last surviving member of a Jaina family governed by

Aliyasanthana Law, as is modified by the Statute namely The Jaina Succession Act of 1929.

4. The said Chandayya Hegde had executed a registered Will dated 19-1-1936 bequeathing therein a considerable portion of his immoveable property and the said Office of Potail of the village to his son Jivandara. The said Will has come into operation on the death of the said Chandayya Hegde on 17-7-1937.

5. The petitioner as guardian filed an application dated 11-8-1937 to register Jivandara, the minor son and legal heir of the said Chandayya Hedge the last Office-holder, as Potail, and also to appoint a deputy to discharge the duties of the Office during his minority.

6. The matter was enquired into by the Revenue Department and finally on hearing the arguments of Counsels appearing for the contesting candidates the Revenue Divisional Officer was pleased to regist Jivandara, the minor son of the said Chandayya Hegde to the Office of Potail of Thenka Yedapadavu village and also to appoint the nominee proposed by the registered minor's mother and guardian as deputy for the minor in his order dated 12-3-1938 in R.Dis.No.153-38.

7. But unfortunately the learned Collector of South Kanara has reversed the order of the Revenue Divisional Officer, in his order dated 27-5-1938 in D.Dis.No.2085/38 and has declared

that a stranger may be appointed to the office.

8. The learned Collector has entirely failed to note that the Aliyasanthana law as is applicable to Jains is now modified by a statute namely Jaina Succession Act of 1929.

9. The Lower Court should have found that if a Jain in South Kanara dies without leaving any Aliyasanthana heirs, Mithaksara law is immediately applicable to him according to the Jaina Succession Act and consequently the heirs according to Mithakshara law will be the legal heirs of the deceased.

10. Hence in this case since the said Chandayya Hegde died without any Aliyasanthana heirs, his minor son Jivandara is the legal heir , and the Office of Potail should legitimately go to him.

11. Further since Chandayya Hegde was the last member of his family, even if he had died without leaving a Will, Jivandara the son, being his mithaksara heir, would have automatically got Chandayya Hedge's entire property,which he would not have been entitled but for the Jaina Succession Act.

12. Therefore the Lower Court should have held that Chandayya Hegde was a Jain governed by Aliyasanthana and mithaksara law of succession as is now modified by Jaina Succession Act of ~~1912~~ 1929.

13. The Lower Court erred in holding that the said Chandayya Hegde did not leave any heirs to succeed to the post.

14. Whereas the Lower Court should have held that though the said Chandayya Hegde did not leave any Aliyasanthana heirs to succeed to the post, he left Mithaksara heirs to succeed to the post--the said Mithaksara heir being his son Jivandara.

15. Apart from this, the Lower Court should have honoured the wishes of the last Office-holder and appointed Jivandara as Potail since the said Chandayya Hegde has made a testamentary disposition of the Office of Potail to his said son.

16. The Lower Court has departed from all pas precedents of the Revenue Department in the Distr

17. In the year 1914 a Jain by name Gummanna Shetty died making a testamentary disposition of the Office of Potail of Arla village to his son Dharmapala Shetty. The Revenue Department has upheld the disposition in their order dated 1-6-1914 in R.Dis.800/17 of Bantwal Deputy Thasildar's Office

18. In the year 1920 Devaraja Shemitha another Jain made a similar disposition in favour of his son of the office of Potail of Shirthadi village,

under similar circumstances i.e., when he had no Aliyasantha heirs. In this case also the Revenue Divisional Officer of Cundapoore has recognised the disposition in his order dated 5-6-1920 in Dis.66.R. Rev. 20.

19. The arrangements in both the above cases and in several other matters have not been disturbed.

20. In the present case by passing of the Jaina Succession Act in 1929 the minor's right and title to the Potailship is clearly and strongly implemented-- an aspect which the learned District Collector entirely overlooked.

21. Even if it should be held that the Office of Potail cannot be the subject matter of testamentary disposition even when there are no Aliyasanthana heirs, the Collector should have considered Jivandara as the legal heir according to Mithaksara law as is now applicable to Jains in South Kanara according to the Jaina Succession Act of 1929.

22. Therefore the petitioner humbly prays that the Hon'ble members of the Board may set aside the Collector's order and restore the Revenue Divisional Officer's order dated 12-3-1938 and register Jivandara to the Office of Potail of Thenka Yedapadavu and that the Deputy be confirmed.

23. It is further respectfully submitted that since this is the first case coming up under the

Jaina Succession Act, the Hon'ble Board's best attention is craved.

24. The Hon'ble Members of the Board may also be pleased to stay further proceedings in the matter in the Lower Courts and call for records.

25. The petitioner also prays that she may be given a hearing through her Counsel as and when the Hon'ble Members of the Board find it convenient.

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for petitioner.

Petitioner.

Madras. 26-7-38.

Before the Hon'ble Members

of the Board of-Revenue,

MADRAS.

Kusumaji, registered
minor Jivandara's
mother and guardian..Petr

-vs-

1. Bhojaraja Padivala
2. Shesha Shetty .. .. Rspts.

PETITION

Mr. M. K. Devaraj,

Counsel for petr.

R.Dis.No.153-38.

Proceedings of the Revenue Divisional Officer, Mangalore Division, dated: 12th March 1938.

M. R. Ry. M. S. Jagannayakulu Naidu Garu, B.A.,

VILLAGE OFFICERS - Mangalore Taluk - Tenka Yedapadavu Village Patel's post - Vacancy - Proposals - Orders passed.

Read (1) Mangalore Tahsildar's report D.Dis.No.7088-37-A4 dated 23-12-1937.

(2) petition of M.R.Ry.K. Pandyaraja Ballala of Moodabidri, dated 3-2-1938.

(3) connected papers.

Heard M.R.Ry.K.B.Jinnaraja Hegde Avl., B.A.,B.L., Advocate for M.R.Ry.K.Pandyaraja Ballala (2) M.R.Ry.S.Nagarajaya Avl., B.A., B.L., vakil for Puttabhi Rama Rao (3) M.R.Ry.Rao Bahadur M.M.Suvarna Avl., B.A.,B.L.,vakil for Bhojaraja Padivala and (4) M.R.Ry.Rao Sahib P.N.Bhandarkar Avl., B.A.,LL.B.,vakil for Seshu Shetty.

O r d e r

Jivandra, the minor son of Chandaya Hegde, is registered to the office of Patel of Tenka Yedapadavu Village.

P. Rama Rao, the nominee proposed by the registered minor's mother and guardian, is appointed as deputy for the minor.

Sd/ M. S. Jagannayakulu,
12-3-1938
Revenue Divisional Officer.

/True copy/

14.3.38

Head Clerk,
Mangalore Divisional Office.

R.D.S./14-3.
Compd. GN

To the candidates through their vakils.
To Kusumajiamma widow of Chandya Hegde, T.Yedapadavu, thro' the Tahsildar of Mangalore.
Copy to the Tahsildar, Mangalore Taluk.

...Dis...o.2065/38.

Proceedings of the Collector of South Kanara, dated the 27th ..y 1938.

Sri Rao Bahadur ..V. Vellodi, B...

Village Officer - Mangalore Taluk - Tenka Yedapadavu village - Mokhtasan - Appointment - Appeals - Orders passed.

Appeal petition, dated 2...1938 of Bhaskattu Muttu Shetty, nephew of Jinkappa Kotwali of Yedapadavu village, Mangalore Taluk.

Mangalore Revenue Divisional Officer's remarks, ...dis. 2209/38-A, dated 24.4.1938 and the connected records.

Appeal petition, dated 26.4.1938 of Bhojaraja Adiva..., son of Jinnappa Bhoje of Tenka Yedapadavu village, Mangalore Taluk, filed through Rao Bahadur M. ... Suvarna, ..., B...., Advocate, Mangalore.

Mangalore Revenue Divisional officer's ...dis.2342/38-A., dated 26.4.1938.

Heard the appellants and the respondents through their Counsels.

The vacancy occurred on account of the death of the last office holder Chandaya Bhoje, a Jain governed by the Aliyasantana law of Succession. He did not leave any heirs to succeed to the post. In the absence of legal heirs, the post had to go to a qualified stranger. But, the Revenue Divisional officer ordered the registry of the minor son of the deceased last office-holder, to the post as he thought that it would be unreasonable to overlook his claim and appoint an outsider. When the post has to be filled up by the appointment of a ------ qualified stranger, the registration of a minor is irregular. The Revenue Divisional officer's order registering minor ------- Jeevendra and appointing ... Rao as the minor's deputy is therefore cancelled.

2. The post is now declared non-hereditary. The Revenue Divisional officer should appoint the best man available to the post.

(By Order)

Mukhtasar 31.5.38

Huzur Deputy Secretary.

To the Revenue Divisional officer, Mangalore with his office file ...Dis.153/38.

To the appellant Shetha Shetty through his Vakil, M.Ry. Rao Saheb ...J.Anandarkar Avl., B.A., ..B.L., Mangalore.

To the appellant Bhojaraja Adivaya through his Advocate, M.Ry. Rao Bahadur M.M. Suvarna Avl., B.A., B.L., Mangalore.

To the 1st respondent Jeevendra by guardian mother Kusumaji through her Advocate, M.Ry. K.B. Jinaraja Hegde, Avl., B.A., B.L., Mangalore.

To the 2nd respondent ... Rao through his Vakil, M.Ry... Nagarajaiah Avl., B.A., B.L., Mangalore.

M.K. DEVARAJ. M.A., B.L.

The Hon'ble Members of the Board of Revenue,

MADRAS.

Sir,

On 26-7-1938, I filed a petition on behalf of Kusumaji, widow of Chandayya Hegde, mother and guardian of her minor son Jivandara who was registered to the office of Potail of Thenka Yedapadavu village, Mangalore Taluk, South Kanara District, and which order was cancelled by the District Collector later on.

According to the Hon'ble Board's standing order 156 clause.3 my client the petitioner is entitled to a second appeal to this Hon'ble Board. Since Jivandara is the son and the legal heir of the last Officeholder Chandayya Hegde, he is entitled to come up in second appeal before this Hon'ble Board, and as chances of success in Second Appeal is greater I request you, Sir, to treat the said Petition as a Second Appeal and give all the facilities for arguing the case as a Second Appeal. Because the matter is very important since this is the first case coming up under the Jain succession Act and also since the Collector has ignored the line of succession and the right of heredity to the son, the Collector's order may operate as a precedent having adverse effect upon the entire Jain community.

Yours faithfully,

M. K. Devaraj.

Counsel for petitione:

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	8/8	
When copied ..	10.8	
When examined ..	10.8	
When signed	12.8	
When despatched.		

SUBJECT :— V.D.s - (S. Kanara) - Mangalore Tq - Tenka Yedapadavu vge - Potail - Appointment - Revision Petn - Kusumaji Amma.

READ AGAIN 12 AUG 1938 dated ____ 19____.

" " ____ " ____ 19____.

READ ALSO :— No. A.4564/38 From the Petns Cell No. ____, dated 26.7.19 38.

" ____ " ____ " ____ " ____ 19____.

" ____ " ____ " ____ " ____ 19____.

Order / Resolution Ms. / Rout. No. A4564/38-1, dated 8.8.19 38.

Forwarded to the Collr of S. Kanara for submission of connected records in which he considers necessary on allegations in the petn which are not clearly dealt with in the records.

Alm 1VG 3.8.38. 888

D/C 8.8.38

The Collr of S. Kanara with a petn in Mysl & its enclosures)

Issue IC. SIV

A5365

D.Dis.5239/38. South Kanara Collector's Office,
Mangalore, dated 7th September 38.

K-4540/38

BOARD OF REVENUE
16 SEP 1938
MADRAS

From

Sri Rao Bahadur M. V. Vellodi, B.A.,
Collector of South Kanara.

12 938

To

The Secretary to the Board,
Land Revenue, Madras.

Sir,

VILLAGE OFFICERS-(South Kanara) - Mangalore Taluk - Tenkayedapadavu village - Potail - Appointment - Revision petition - Kusumaji Amma - Reported -

****

R 1/cf Board's Refce.A.No.4540/38-1 dated 8.8.1938.

****

I resubmit herewith the petition of Kusumaji with its
R 1/cf enclosures received with the Board's Refce.A.No.4540/38-1 dated 8.8.38.

2. The vacancy of Potail of Tenkayedapadu village in question occurred on account of the death of the last office-holder, Chandaya Hegde, a Jain governed by the Jain Succession Act. He left no legal heirs to succeed him to the post. The petitioner who is the widow of the deceased potail claimed the post on behalf of her minor son Jivendra on the ground that her deceased husband left a will that his son Jivendra should succeed to the post held by him and that under the Jain --- Succession Act also Jivendra was entitled to the post. As the deceased had no legal heirs there were also applications from strangers for the vacancy. The Revenue Divisional --- Officer heard all the applicants. He held that the Jain Succession Act did not apply to the case but, however, ordered the registry of the minor Jivendra to the post for the reasons mentioned by him in his Proceedings R.Dis.153/38 dated 12.8.38.

3. The unsuccessful applicants, viz. Shesha Shetty and

Bhojaraja Padivala appealed to me against the Revenue Divisional Officer's order contending that the registration of a minor in the absence of a legal heir was opposed to the rules in force. There were essentially two points involved in this case viz. (1) whether the minor son of the last office-holder could be an heir to the office held by the father in the absence of legal heirs in a community governed by the Jain Succession Act, (2) if he was not such an heir whether the rules permitted the registration of a minor who was a stranger.

4. The Jain Succession Act III of 1929 under which the petitioner claimed the post on behalf of her minor son is a law enacted to amend and define the Law of Intestate Succession among Jains governed by the Aliyasanthana Law of Succession. I had therefore no doubt that it applied only to property both movable and immovable and not to a village officer's post held by a Jain whether declared hereditary or not. As regards the will the deceased had no authority to name his successor to the office as that was a matter for the authorities to decide. I thus refused to hold that the minor Jivendra was an heir to the post by his father. As regards point (2), seeing that para 8 of B.S.O.No.148 applies to the registration of merely minor heirs and that there is no provision for the registration of a stranger minor, it was clear that the registration of a stranger minor was irregular. I therefore cancelled the Revenue Divisional Officer's order and directed him to appoint the best man available to the post in my Proceedings D.Dis.No.2085/38 dated 27.5.1938.

5. The petitioner has now sought a revision of my order. There are no fresh grounds urged in the revision petition. The petitioner however quotes two instances where the Revenue Department upheld the testamentary disposition of the office of Potail by Jains to their sons. The instances quoted by the petitioner are pretty old. It is possible that there was no contest at the time in the cases which did not also come up

6. The Revenue Divisional Officer, Mangalore, has already passed fresh orders R.Dis.3040/38 dated 23.6.38 appointing a qualified stranger to the post with reference to my Proceedings D.Dis.No.2085/38 dated 27.5.38 and two of the unsuccessful candidates have appealed to me against this order. I have deferred passing final orders on them till the final disposal of the present revision petition.

7. I enclose the connected records for reference.

(1) Mangalore Revenue Divisional Officer's R.Dis.153/38.

(2) Huzur D.Dis.2085/38.

(3) Mangalore R.Dis R.Dis 3040/38

For Collector.

5.11.38

8.9.38.

T.A. Cell.

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	5.10	
When copied ..		
When examined..		
When signed		
When despatched.	7/OCT 1938	

SUBJECT:— V.O.s - (S. Kamara) Mangalore Tk. - Tenka Yedapadavu village - Potail - Appointment - Revision Petn. - Kuchunnaji Amma.

READ AGAIN ____, dated ____ 19____.

" " ____ " ____ 19____.

READ ALSO:— No. A 5305/38 From the Collr. S.K. Dis. No. 5239/38, dated 2.9. 1938.

" ____ " ____ " ____ " ____ 19____.

" ____ " ____ " ____ " ____ 19____.

Order / Resolution No. Ms. No. A 4560/38-2, dated 5.10. 1938.

The Collr. is requested to obtain and submit the file of the R.Dy. Mangalore R.Dis 3040/38 dated 23.6.38 at an early date.

25

Ref.A1-4281/38.

South Kanara Collector's Office,
Mangalore, 15th October 1938.

From

Sri Rao Bahadur M. V. Vellodi, B.A.,
Collector of South Kanara.

R.P 12-3
A 5910

To

The Secretary to the Board,
Land Revenue & Settlement,
Madras.

Sir,

Village Officers - (South Kanara) - Mangalore Taluk - Tenka Yedapadavu village - Potail - Appointment - Revision petition - Kusumaji Amma.

3 Cf Board's Reference A.No.4540/38-2, dated 5.10.1938.

*****

I enclose herewith the file R.Dis.3040/38, dated ~~26th~~ 23rd June 1938 of the Mangalore Revenue Divisional Office.

For Collector
15/10

A 4540/38

180, Govindappa Naick Street,

ADVOCATE.

G.T., Madras, 26-10-1938.

A6059

To

The Hon'ble Members of the Board of Revenue,

MADRAS.

Re:Petition by Kusumaji, the mother and guardian of Jivandara the registered minor to the post of Potail of Thenka Yedapadavu Village, Mangalore Taluk, South Kanara District.

Sir,

To substantiate the position of my client the petitioner, I send herewith, some of the orders passed in other matters in the District, to show that it is a recognised rule in the District of South Kanara to appoint or register the minor heirs of the last office-holder to the post.

Further a copy of an order sent herewith dated 27-10-1936 of the Revenue Divisional Officer of Puttur, which pertains to a case of Jains, shows that it is enough to certify that the person is the son of the headman, and that it is not necessary to consider the question of succession.

Five sample orders are enclosed herewith.

Yours faithfully,

M. K. Devara

Counsel for petitione

re of
e officers who are
emed by statute
rding to Boards Proceedings
ited 13-5-1913 a stranger
be appointed only in the
ence of an heir or other
son in the village itself
roughly qualified for the
...ment. MR.

C.F. 16

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying	3.8 PM 9.11	
When copied	10/11	
When examined	11.11	
When signed		
When despatched.		

SUBJECT:— V.Os- (S. Kanara)- Mangalore Tq- Tenka Yedapadavu village. Potail- Appointment - Registry of Minor Jivendra - Revision Petn by Kusuma / Amma - Allowed.

READ AGAIN, dated 19.

13. cf. " " S. Kanara Collr's order D. Dis No 2085/38 19 27.5.38

READ ALSO:—

3-8-cf. No. R. 4540/38 From the Petns' Counsel No. , dated 26.7. 19 38

19. cf. " A 5365/38 Collr of S. Kanara " D Dis 5229/38 7-9 19 38.

27. cf. " A 6059/38 Petns' Counsel " " 26.10 19 38.

} Q to Petn & Collr

Order Ms. Resolution Rect. No. 3181, dated 9-11-19 38.

P 1 to 5 cf

This is a revision petition by Kusumaji Amma on behalf of her minor son Jivendra against the order of the Collr of S. Kanara No DDis 2085/38 d. 27.5.38 setting aside the order of the R. DO Mangalore

P 13 cf

R. Dis No. 153/38 d. 12.3.38.

P. 11. cf

registering the said minor for the office of Potail of Tenka Yedapadavu village Mangalore Tq, S. Kanara district.

2/ The Board has perused the connected records. It has been the practice for a century to follow the hereditary

principles in the S. Kanara PP 5-6 cf
district so far as succession
to village offices is concerned
and the Board sees no reason
to depart from the established
practice. Although the Jaina
Succession Act III of 1929, relied P. 1741. Madras Code Vol II
upon by the petitioner's Counsel theoretically
refers only to moveable and
immoveable property, the Board
is of opinion that it is equitable
to apply its principles to a
case like the present one. The
Board accordingly finds that
the order of the RDO Mangalore P. 11 cf
in R. Dis 153/38 dated 12.3.38
registering the said minor Jitendra
is correct and that this ord.
should not have been interfered
with. It therefore restores the
same and sets aside the Collr's
Order No D. Dis 2085 d 27.5.38. P. 13 cf

To Sri M. K. Devaraj
Advocate
180. Govindappa Naicken
G. T. Madras

(with enclosures returned)
PP 29-38 Cf to be sent.

To the Addl J. [illegible] Ke

(with records as per list return
ASR section P. 21 cf

A6535

Ref.A1-4281/38.

South Kanara Collector's Office

Mangalore, 28th November 1938

From

Sri Rao Bahadur M. V. Vellodi, B.A.,

Collector of South Kanara.

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Village Officers - (South Kanara) - Mangalore Taluk - Tenka Yedapadavu village - Potail - Appointment - Revision petition to Board - Kusumaji Amma.

*****

The petition referred to above seems to have been finally disposed of by the Board in its Proceedings, Mis.No.3181, dated 9.11.1938. But I have not yet received a copy of the said proceedings or the connected files as noted in the margin which were submitted for reference with my report D.Dis.5239/38, dated 7.9.1938 and Ref.A1 4281/38, dated 15.10.1938 in reply to Board's References, Ref.A.No.4540/38-1, dated 8.8.1938 and Ref.A.No.4540/38-2, dated 5.10.1938. I received by mistake the copy of the said B.P.Mis.3181, dated 9.11.1938 with enclosures intended for the petitioner's advocate Sri M. K. Devaraj, Madras, and these have already been sent to the advocate. I request that the copy intended for me with the three files may be ordered to be sent as early as possible.

1. Mangalore Rev. Divl. Officer's R.Dis.153/38.
2. Huzur D.Dis.2085/38.
3. Mangalore Rev. Divl. Officer's R.Dis.3040/38.

P 17 (I) 19.21 (I)

P 23 (I)

BP Mis 3181/ 9.11.38
This needs seal.

23

for Collector.

30.XI.38.

Village Officers – (S. Kanara) – Mangalore
Tenka Yedapadavu Village – Patail – Appt
Petition by Kusumavathi Amma

A.45/D/38

2: S(L R)

Nonhereditary & Nonstatic
Headman – Appointment.

2/ No second appeal lie but a revision is maintainable. The petn is time.

3/ The R.D.O in his ord cancelled the petitioner Minar Jinendra Kadmanis office of Tenka Yedapadavu ne P. Rama Rao, the nominee of the mother and guardian as deputy. The Collr set aside of the R. DO on the ground the rice holder was a Jain governed by the 'Aliya Santana' Law, that he did not leave any heirs to succeed to him, that the office is non hereditary and that therefore it should go to a stranger. Although village Offices in the S. Kanara district are Nonhereditary & Nonstatutory the hereditary principle is being otherwise strictly enforced. the registration of minors is being followed

Vide J.S.A's notes at Pages 7-8 of (J) and
1.2's (Now M.I's) remarks thereon In this case
Colln's order setting aside the registry of the last
mentioned by the R.D.O, in the absence of an
heir Hiya Santana - now would seem to lie a
question Further the contention of the petitioner
would that the Coll should have, in the absence
Hiya Santana heirs', Considered the minor in
estion as the legal heir of the last Office holder
der the Mitakshara Law which is now
plicable to Jains in the Shamara Dist vide
the Jaina Succession Act 1929, also
is not known whether the Coll considered
aspect of the question before setting aside
minors registry and directing the appointment
ager It seems necessary to examine the
the records may therefore be called for
ired

4/. Since the Coll's order, if given
it disturb the arrangements already
e R.D.O, the stay prayed for by the
ner may be granted. The deputy appointed
However
R.D.O would seem to be functioning
ost as may be seen from the Vakalat
for orders.

L. S. (L. R) P 17 Cf Issued as the Board's Ltr No 4540/38-1 d 8.8.38
P.P. G - 22 Cf A. 5365/38 from the Coll of L. Kanara & S.

Please see the Colls report at
ages G-21. Cf.

Cf Kanara 61

21 the Coll reports that the
R. Bo has passed fresh order in his
R. No -470/00 d 23.6.38, appointing a
qualified stranger to the headmans post
question, with reference to his (Colls)
Proceedings No D. Dis 2085/38 d. 27.5.38
(the order were appealed against by the Boar
petitioner) the Coll has not however, obtain
the R Bo's file containing the order making
the fresh appointment An examination
this file is necessary in order to know
who the stranger appointed is and why
was preferred to the petitioner's son who
was originally rejected to the Office in accordance
with the rules by the R Bo.

Draft submitted.

Ah
29.9.38
IVG
IXJ

4/10/38

Issued as the Boa
A. 5960/38 from the Coll of L. Kanara & S

M.3

A.S.(C.R)

Please see the Colrs order at page 13. CF, the receivers petition against it at pages 3-8. CF, and the Colrs report thereon at pages 19-21. CF

2/ The point for consideration, the Board now is, whether the Colrs' order letter, ide the registry of the minor petitioner the headmans office, in the view that he is t an heir to the last office holder as contemplated B.S.O. 148 (8) and that therefore the registration a stranger minor is irregular, is correct.

P. 13. CF

P. 11. CF

P. 20. CF Para (4)

P. 855. BSO. Vol I

3/ Although, many offices in the Kanara district are not governed by statute nd are also not hereditary under the B.S.Os, yet principles of hereditary succession are more y observed there than in other "non-hereditary" istricts and the registry of minors is also recognised nd adhered to in consequence. Attention is invited this connection to a full discussion of this oint in B.P. No 3857 d 13.12.37. Now, in so far the principles of hereditary succession are being bserved in that district the procedure to be followed n making succession to village offices there would ee the one laid down in Sec. 10 of Act III of 1895, amplified by B.S.O. 148 (4) and as modified to Mint the Aliyasantana law of succession of nephews nieces sons). In the present case the last office holder

BSO. 156 (1)
P. 869. BSO. Vol

P. 520. Madras Code Vol

P. 853-854 BSO. Vol

handara Hegde had no such heir and in the absence of these, his own son, Minor Jiandra (Petn) was registered in the M. wd. It would, as observed by the A. D.O, be unreasonable to overlook his claims and appoint any stranger unconnected with the family. The registry of the minor, who, though not an "Aliyasantana" heir, is yet the next heir to the last Officeholder, being his own son, would not appear to be at variance with the Boards' view in B.P. Mis 2166 d 8.8.36. ~~In fact~~ the Board has held that succession to village offices should be through male in preference to females but relations should be preferred to strangers. If this principle is applied to the present case, the Coll's assumption that the minor children is not an heir will not be correct - the relation here is no other than the last office holder's own son. In this view and in view of the petitioner's Contentions at paras (8) (9) and (10) at p 5 of the Coll's order setting aside the registry of the petitioner would seem to be open to question and there would ~~also~~ seem to be a case for interference with it ~~the same~~. Fur orders.

Page 1741 Vol IV 7
Madras Code
(Book 26)

to moveable — immoveable property,
it is equitable to apply the
principles of such a case as this.
I think the RDO was right.

Mg/XI

Rec'd 4.11

A.S. (LN)

(LN)

Draft submitted

Ag
5.11.38.

MG 5.11.38

DE-CLASSIFICATION CHECK SLIP.

AS (2-45)

Mis 3181
9.11.38

Sec'l. Sec'y.
Sec'y.
Asst. Sec'y.

Asst. Sec'y.
Sec'l. Sec'y. Sup. Rev. J.S. Sec'y. M/3 M/2 1

Passed for record.

A.S.(L.R.)

A.S.(Sec'l.) 29.11.38
A.S.(Sup.Rev.)
A.D.S. & L.R.
I-A.

4/2 XII 38

4/12/38

NOTE.- ENTRIES NOT REQUIRED TO BE SCORED OUT.